IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7512 OF 2006

Shri Umesh Prabhudas Patel] .. Petitioner

Versus

1. The Commissioner, Nashik Municipal Corporation & 3 ors.] .. Respondents

Mr. P.N. Joshi for the petitioner.

Mr. V.A. Gangal for the respondents No.1 and 2.

Mr. R.D. Rane, GP, for the respondents No.3 & 4.

CORAM: S.B. MHASE &
D.G. KARNIK, JJ.

DATED: 30TH OCTOBER, 2007

P.C. :

1. Rule. Returnable forthwith. By consent of the parties, called for hearing.

2. By this petition, the petitioner prays for a declaration that the Reservation No.107-A reserving the land of the petitioner bearing survey No.665 for the purpose of a High School made in the Development Plan of Nashik Municipal Corporation be declared lapsed on account of respondent No.1 - Nashik Municipal Corporation not taking the steps required for

acquisition of the property under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act").

3. The Development Plan for Nashik Municipal Corporation area was sanctioned by the Government on 22nd June, 1993, and came into force with effect from 16th November, 1993. In the said Development Plan, the petitioner's property was shown as reserved for the purpose of a High School under Reservation No.107-A. For ten years of commencement of the Development Plan, the respondent No.1-Corporation did not take any steps for acquisition of the property and its use for the public purpose for which it was reserved. The petitioner, therefore, served a notice under section 127 of the MRTP Act on the respondent No.1 on 21st May, 2004. Respondent No.1 thereafter convened a meeting of its Standing Committee to consider the said notice. The Standing Committee of respondent No.1-Corporation, by a resolution dated 5th November, 2004, resolved to acquire the petitioner's property. Soon thereafter, the respondent No.1 sent a copy of the resolution to the Collector, Nasik with a request to commence proceedings for acquisition of the petitioner's property. It is not clear what steps were thereafter taken by the respondent No.1-Corporation or the Collector in that matter. The

fact, however, remains that till the date of filing of this petition and even till today, no declaration under section 6 of the Land Acquisition Act has been issued. No declaration under section 6 of the Land Acquisition Act has been made and no Notification has been issued by the Government regarding the acquisition of the petitioner's property.

4. Recently, in **M/s. Girnar Traders Vs. State of Maharashtra & ors.** 2007 (3) CCC 5 (SC), a three-Judge bench of the Supreme Court after considering the relevant provisions of the MRTP Act has held:

> "32. It may also be noted that the legislature while enacting section 127 has deliberately used the word 'steps' (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence

> when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.
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> 33. The MRTP Act does not contain any reference to Section 4 or Section 5A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced. (underlining supplied)

4. It is clear from the aforementioned passage that taking of the steps under section 127 of the MRTP Act contemplates making of declaration under section 6 of the Land Acquisition Act. Unless that is done, it cannot be said that steps contemplated by section 127 of

the MRTP Act are taken. In the present case, since that has not been done and no steps have been taken within the statutory period, the reservation has lapsed. The Writ Petition is, therefore, required to be allowed. For these reasons, Writ Petition is allowed and Rule is made absolute in terms of prayer clause (a), which reads thus:

> "(a) Issue an appropriate Writ/Order, directing the Respondents to declare that the reservation of the land belonging tot he Petitioner being Reservation No.107/A for High School as declared by the Nashik Municipal Corporation in its Development Plan stands lapsed on account of failure of taking any steps after Statutory Notice under Section 127 of the Town Planning Act has been served upon them.

5. Mr. V.A. Gangal, learned counsel for the respondents No.1 and 2 submit that respondents Nos.1 and 2 want to challenge this order before the Supreme Court and, therefore, implementation of the order be stayed. Since we have relied upon the most recent decision of the Supreme Court itself, there is no question of granting any stay. The request is, therefore, rejected.

Sd/-
[D.G. KARNIK, J.]

Sd/-
[S.B. MHASE, J.]